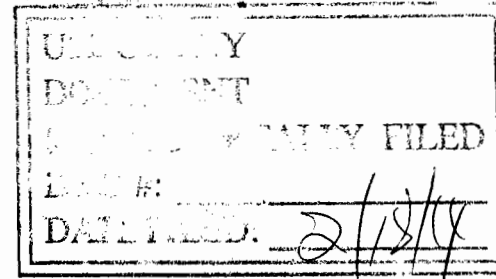


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



KELLY PETERSON, AS EXECUTRIX OF THE ESTATE
OF OSCAR PETERSON, DECEASED, and JAYARVEE,
INC.,

Plaintiffs,

v.

HILARY KOLODIN, A/K/A HILARY KOLE,

Defendant.

13- CV- 0793 (JSR)

~~[PROPOSED]~~ FINAL JUDGMENT
AND PERMANENT INJUNCTION

JED S. RAKOFF, U.S.D.J.:

WHEREAS, plaintiffs Kelly Peterson, as Executrix of the Estate of Oscar Peterson, and Jayarvee, Inc. brought this action for copyright infringement seeking a declaratory judgment and permanent injunction against defendant Hilary Kolodin, also known as Hilary Kole, alleging that plaintiffs were the joint owners of copyright to four sound recordings made by the late Oscar Peterson and Kole of four American standard songs, namely "More Than You Know," "Our Love is Here to Stay," "My Romance," and "Bewitched, Bothered and Bewildered" (the "Recordings"), and that Kole was infringing those copyrights by unauthorized copying and distribution of the Recordings ; and

WHEREAS, Kole counterclaimed for a declaratory judgment declaring that she and the Peterson Estate (but not Jayarvee) are the joint owners of copyright to the Recordings, and in connection with said counterclaim obtained a certificate of copyright registration for the original twelve "takes" (unedited versions) of the Recordings naming herself and the Peterson Estate as joint copyright owners (Registration No. SRu 1-109-019); and

WHEREAS, the Court issued a Memorandum Opinion dated September 6, 2013 addressing the issues which it determined should be tried; and

WHEREAS, the Court conducted a bench trial on September 23, 2013, October 7, 2013, and October 17, 2013; and

WHEREAS, the Court has issued detailed Findings of Fact, Conclusions of Law and an Order dated January 29, 2014 in which it declared (at p. 14) that “plaintiffs are entitled both to a declaration that they are owners of the copyrights in all versions of the Recordings and to an injunction permanently barring Kole from any sale, distribution, or other public use of the [R]ecordings”; it is, therefore, hereby

ORDERED, ADJUDGED AND DECLARED that plaintiffs are the joint owners of copyrights in all versions of the Recordings, and their Copyright Registration No. SRu 1-101-425 (bearing the title “Hilary Kole & Oscar Peterson – 2007 Session”) is valid and effective in all respects; and it is further

ORDERED, ADJUDGED AND DECLARED that Kole is not an owner of copyright in any version of the Recordings, and her Copyright Registration No. SRu 1-109-019 (bearing the title “Hilary Kole Oscar Peterson Sessions CD”) is invalid and ineffective in all respects; and it is further

ORDERED that Kole, her agents, servants, officers, employees, and all those acting under her control and/or on her behalf and/or in concert with her, are PERMANENTLY ENJOINED and RESTRAINED from:

1. Copying or otherwise reproducing the Recordings, or any portion thereof, in any

format and by any means whatsoever, including without limitation on compact discs (“CDs”), phonorecords, audiotapes, computer hardware or software or on or in any other objects or medium or by any other means, whether now known or hereafter developed;

2. Preparing derivative works based upon the Recordings, or any portion thereof, including without limitation preparing works by means of audio “sampling,” abstracting or other means of extracting audible elements from the Recordings;
3. Distributing or offering to distribute by any means, whether by gift, sale or other transfer of ownership, or by rental, lease or lending, or displaying, publishing, advertising or marketing, phonorecords, copies or versions of the Recordings; and
4. Broadcasting, transmitting or playing, or licensing the broadcasting, transmitting or playing of, the Recordings, or any portion thereof; and it is further

ORDERED that Kole, her agents, servants, officers, employees, and all those acting under her control and/or on her behalf and/or in concert with her, shall, within 5 business days of the date of this injunction, cause to be delivered to plaintiffs’ counsel all phonorecords, copies, versions or other reproductions of the Recordings in her or their possession, custody or control; and it is further

ORDERED that Kole, her agents, servants, officers, employees, and all those acting under her control and/or on her behalf and/or in concert with her, shall, within 5 business days of the date of this injunction, permanently delete or otherwise remove from any computer or computer system within her or their possession, custody or control, all phonorecords, copies, versions or other reproductions of the Recordings; and it is further

ORDERED that the Register of Copyrights shall permanently CANCEL Copyright Registration No. SRu 1-109-019 (bearing the title “Hilary Kole Oscar Peterson Sessions CD”) and shall destroy or otherwise permanently dispose of the deposit copies that were submitted therewith; and it is further

ORDERED that this Court shall retain jurisdiction of this matter for the enforcement of compliance with this Injunction.

Pursuant to 17 U.S.C. § 508 (b), the Clerk of this Court is directed to transmit to the Register of Copyrights a copy of this Injunction and of the Court’s Findings of Fact, Conclusions of Law and Order dated January 29, 2014.

SO ORDERED.

Dated: New York, New York
February 12, 2014


JED S. RAKOFF, U.S.D.J.